

Eng. Rep.]

PEATFIELD V. BARLOW—IN THE GOODS OF BAILEY.

[Eng. Rep.]

## PEATFIELD V. BARLOW.

*Order for payment of costs—Interest of London agents and country solicitors and suitors.*

A decree was made in the usual form ordering the payment of costs to F. & Co., the London agents of E. E.'s client had satisfied all claims of E. against him, and now prayed that the costs might be paid to him.

*Held*, that the order for payment to F. & Co. gave them no rights of lien or set-off in respect of the costs, or in any way altered the rights of the principals.

[V. C. M. 17 W. R. 516.]

This was a petition by Mr. and Mrs. Barlow, two of the defendants in the suit.

By a decree made in the suit on the 3rd of June, 1867, it was ordered that the costs of the petitioners should be taxed and paid to Messrs. Few & Co. Messrs. Few & Co. were the London agents of Mr. Esam, of East Retford, the solicitor for the petitioners.

At the date of the decree, Mr. Esam held in his hands a sum of £228 on Mr. Barlow's account, which exceeded all that was due to Mr. Esam for the costs of the suit. Mr. Esam subsequently became insolvent, and executed a deed under the Bankruptcy Act, 1861.

*Schomberg, Q. C.*, for the petitioners, asked that the costs of the suit due from the petitioners to Mr. Esam might be set off against the sum in Mr. Esam's hands, and that the costs to be paid out of the fund in court might be paid to the petitioners. He contended that the order directing payment to Messrs. Few & Co. was merely made in that form for convenience, and in no way affected the rights of those entitled to the money. He cited *Ward v. Hepple*, 15 Ves. 297; *Waller v. Holmes*, 9 W. R. 82, 1 J. & H. 289, and the cases there referred to.

*Pearson, Q. C.* and *Bardswell*, for Messrs. Few & Co.—Messrs. Few & Co. had a lien upon this fund for the amount of costs incurred by them as the agents of Mr. Esam. The payment of costs to the London agents is the usual and ordinary course, and the agents are justified in relying upon it in dealings with their principals. The decree directs payment to our clients, and is therefore binding, independently of any question between Mr. Esam and his client.

**MALINS, V.C.**—This is a case of great importance both to London agents and solicitors and suitors in the country. As to the money in Mr. Esam's hands, Mr. Barlow's right was at any time to direct him to apply it in payment of what was due to him in respect of his bill of costs, and the virtual bankruptcy of Mr. Esam cannot in any way derogate from that right. No doubt, the order in form directs payment to Messrs. Few & Co., but the payment was to be made to them only in their character of London agents of Mr. Esam, who was the petitioners' solicitor. But it was contended that this direction for the payment of costs to the London agents created a new right in them. I cannot accede to that argument. It is clear that if Mr. Barlow had paid Mr. Esam his costs, Messrs. Few & Co. could have no better right than Mr. Esam himself had. That rule was laid down by Lord Eldon in *Ward v. Hepple*, was adhered to by Lord Tenterden, and was followed by the present Lord Chancellor in *Waller v. Holmes*. I must, therefore, accede to the pe-

tion, and make the order asked for; but as it is enforcing an extreme right upon a novel point, there will be no order as to costs.

## PROBATE.

## IN THE GOODS OF BAILEY (DECEASED).

*Probate—Practice—Appointment of different executors in different wills—Codicil appointing sole executors—Implied revocation.*

The testator appointed A. and B. executors in a will disposing of part of his property, A. and C. in a second will, disposing of another part of his property, and sole executors in the codicil thereto.

*Held*, that the appointment of the executors in the first will was revoked, and probate was granted of the three testamentary papers to A. and C.

[17 W. R. 401.]

John Bailey died on the 31st July, 1868, leaving three testamentary papers, and by a will dated the 3rd January, 1856, bequeathed several specific legacies, and appointed his son, W. H. Bailey, and his daughter, Priscilla Bailey, executors.

By a codicil to the last mentioned will dated 24th of January, 1856, bequeathed several specific legacies out of other property—viz., certain South Sea Stock, and appointed his son and other daughter, Mary Jane Bailey, executors.

By a will of the 7th August, 1860, he bequeathed the residue, if any, of the South Sea Stock between his son and daughter, Mary Jane Bailey, and also appointed them his sole executors to this will.

*Searle* moved for a grant of probate of the will of the 3rd January, 1856, the codicil of the 24th January, 1856, and the will of the 7th August, 1860, to W. H. Bailey and his sisters, Priscilla Bailey and Mary Jane Bailey, the executors named in such wills. [Sir J. P. WILDE.—This is never done when the last codicil names certain persons to be sole executors and confirms the last will. It is a question of intention which depends on the language used in the documents.] In *Lowe's case*, 3 Sw. & Tr. 478, 33 L. J. Pr. & M. 155, a testator appointed A. and B. executors, and by a codicil appointed C. sole executrix of his will. *Held*, that the appointment of the executors of the will was revoked. In *Morgan's case*, L. R. 1 Pr. & D. 323, two testamentary papers were executed by a married woman. A. B. C. were, under different powers of appointment, appointed executors in the first will; C. was appointed sole executor in the last. Probate was granted to the three executors.

Sir J. P. WILDE.—Unless you can draw a distinction between this case and that of *In the goods of Lowe*, I shall follow the practice there laid down. For the words used in the last will clearly express an intention to revoke the appointment of the executors in the previous will. There is clearly a difference between the case of *In the goods of Lowe* and the case of *In the goods of Morgan*.

Granted probate of the will and codicil of 1856, and the will of 1860, as containing the last will of the testator to W. H. Bailey, and Mary Jane Bailey, the executors named in the last will dated August, 1860.